

E-Filed: January 6, 2014

NOT FOR CITATION
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

GILBERTO FIERROS,

No. C13-04435 HRL

Plaintiff,

**ORDER THAT CASE BE
 REASSIGNED TO A DISTRICT
 COURT JUDGE**

v.

IMMIGRATION AND
NATURALIZATION DIRECTOR,**REPORT AND RECOMMENDATION**

Defendant.

[RE: Docket Nos. 1 and 2]

Gilberto Fierros sues Immigration and Naturalization Director for wrongful deportation.

Presently before the court is Plaintiff's application to proceed in forma pauperis. A court may authorize the commencement of a civil action in forma pauperis ("IFP") if the court is satisfied that the would-be plaintiff cannot pay the filing fees necessary to pursue the action. 28 U.S.C § 1915(a)(1). In evaluating such an application, the court should "gran[t] or den[y] IFP status based on the plaintiff's financial resources alone and then independently determin[e] whether to dismiss the complaint." *Franklin v. Murphy*, 745 F.2d 1221, 1226-27 n.5 (9th Cir. 1984). Plaintiff's application indicates that his assets and income are insufficient to enable him to prosecute this action. Accordingly, his application to proceed without the payment of the filing fee should be granted.

However, the Court's grant of Plaintiff's IFP application does not mean that he may continue to prosecute his complaint. A court may dismiss a case filed without the payment of the filing fee whenever it determines that the action "(i) is frivolous or malicious; (ii) fails to state a claim on

1 which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from
2 such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). “A pleading that states a claim for relief must
3 contain: (1) a short and plain statement of the grounds for the court’s jurisdiction . . . [and] (2) a
4 short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
5 8(a). Additionally, if the court determines at any time that it lacks subject matter jurisdiction, it
6 must dismiss the action. Fed. R. Civ. P. 12(h)(3).

7 Plaintiff alleges that he was an American citizen who was deported to Mexico after
8 wrongfully being sent to prison. He intended to appeal the sentence, but he inadvertently waived his
9 right to appeal after signing a document he did not understand due to the fact that he speaks little
10 English. He requests that he be granted his citizenship again and that he be brought back from
11 Mexico.

12 Plaintiff does not provide a short and plain statement of the grounds for the Court’s
13 jurisdiction, and from the few facts pled it does not appear that the Court in fact has jurisdiction. In
14 requesting that the Court remedy his wrongful deportation, it appears that Plaintiff is seeking
15 judicial review of an order of removal. However, the “REAL ID Act eliminated district court
16 habeas corpus jurisdiction over orders of removal, vesting jurisdiction exclusively in the courts of
17 appeals.” *Morales-Izquierdo v. DHS*, 600 F.3d 1076, 1080 (9th Cir. 2010). *See* 8 U.S.C. §
18 1252(a)(5) (providing that, with limited exceptions, “a petition for review filed with an appropriate
19 court of appeals . . . shall be the sole and exclusive means for judicial review of an order of
20 removal”). Review by a court of appeals is further limited where the removal was based, as here, on
21 a criminal conviction. *See* 8 U.S.C. § 1252(a)(2)(C) (prohibiting judicial review where removal
22 based on conviction of, among others, a crime involving moral turpitude). Moreover, section
23 1252(g) provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of
24 any alien arising from the decision or action by the Attorney General to . . . execute removal orders
25 against any alien.” Insofar as Plaintiff’s claim for wrongful deportation is a request for judicial
26 review of an order of removal or of the Attorney General’s execution of the order, this Court lacks
27 subject matter jurisdiction. Additionally, to the extent that Plaintiff’s complaint raises any other
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1 claim for relief over which this Court might have subject jurisdiction, Plaintiff still fails to state a
2 claim on which relief can be granted.

3 Because all parties have not yet consented to the undersigned's jurisdiction, this court
4 ORDERS the Clerk of the Court to reassign this case to a district court judge. The undersigned
5 further RECOMMENDS that the newly-assigned district court judge dismiss the complaint.
6 Pursuant to Federal Rule of Civil Procedure 72(b), any party may serve and file objections to this
7 Report and Recommendation within fourteen days after being served.

8 **IT IS SO ORDERED.**

9 Dated: January 6, 2014

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12 HOWARD R. LLOYD
13 UNITED STATES MAGISTRATE JUDGE
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1 **C13-04355 HRL Notice will be mailed to:**

2 Gilberto Fierros
3 C/O Christopher James Castillo
4 1850 Copper Loop #11-11655
5 Las Cruces, NM 88005

6 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
7 **registered for e-filing under the court's CM/ECF program.**
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